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Agenda Item 4b

April 12, 2011

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

- I. **SUBJECT:** Contract Reform Project
- II. **PROGRAM:** Operations Support Services Division
- III. **RECOMMENDATION:** That the Committee recommend that the Board standardize the language in Resolution Numbers 92-04B-1 and 92-04B-2 so that all contracts have a permitted maximum duration of five years

IV. ANALYSIS:

In January 2011, Operations Support Services Division (OSSD) partnered with the Investment Office (INVO) and Legal Office (LEGO) to begin a Contract Reform project. Approximately 50 CalPERS staff throughout the Enterprise participated in this 2-1/2 day working session. The goal of the project is to transform the CalPERS contracting process, making it more nimble and responsive to customer and user needs while ensuring that legal and other control requirements are fulfilled. Specifically, the team set a goal to improve the elapsed time for contracts and for Requests for Proposals (RFPs) by 50%.

- For contracts – reduce the average time from request to full execution from 100 days to 50 days.
- For RFPs – reduce the average time from request to release from 162 days to 81 days.

This project consists of four working teams assigned to the following goals: 1) Reduce complexity and standardize process; 2) Address issues around delegation of authority and accountability; 3) Educate users; and 4) Implement an accelerated IT solution. The teams were given 100 days to implement the recommendations that came out of the January working session.

1. Contract Maximum Term (For Action by the Committee)

One of the recommendations from the Contracts Reform Team is a recommendation to standardize the Board resolutions regarding contract duration.

Resolution 92-04B-1, "Contracts & Procurement of Goods and Services – Policy Revisions," states that "[t]he duration of PERS' contracts shall be no more than five years, except when the Board has made an affirmative decision that a longer term is necessary to fulfill the Board's duty to serve the interests of System members and Beneficiaries, including interest in defraying administrative expenses)." In contrast to this resolution, Resolution 92-04B-2, "Contracts & Procurement of Goods and Services – Exemptions from Competitive Bidding," states that "[n]o contract exempted from competitive bidding pursuant to these provisions can be for a period greater than three (3) years, without express Board approval."

CalPERS staff recommends standardizing the permitted maximum duration of all CalPERS contracts so that all contracts may have a maximum term of five years.

Standardizing the process and allowing the sole source contracts to run for up to the standard five year period would:

- Reduce the number of contract amendments
- Reduce the number and frequency of solicitations
- Provide the ability to negotiate better fees
- Increase staff's capacity for value added work
- Reduce risk by increasing standardization

Staff recommends modification of Resolution Number 92-04B-2 so that it, and Resolution 92-04B-1, both state that, "[t]he duration of PERS' contracts shall be no more than five years, except when the Board has made an affirmative decision that a longer term is necessary to fulfill the Board's duty to serve the interests of System members and Beneficiaries, including interest in defraying administrative expenses)." This recommendation requires action by this Committee and by the Board.

2. General Counsel Sub-delegation (Information Only)

A second recommendation from the Contracts Reform Team was that the General Counsel sub-delegate to the Deputy General Counsel the authority to approve deviations from the boilerplate contract terms and conditions. Currently, all modifications to the approved boilerplate terms and conditions for CalPERS contracts require the prior approval of the General Counsel.

Sub-delegation to the Deputy General Counsel will:

- Reduce time from contract request to contract execution
- Reduce the General Counsel's workload
- Increase vendor satisfaction through reduced contract processing time

- Enhance conformity to the process

In October 2008, the General Counsel instituted a procedure whereby program staff must, in order to obtain the General Counsel's approval of any deviation to a boilerplate contract term, first prepare an email to the assigned internal legal counsel listing the changes that program staff is requesting approval. Internal counsel then adds his or her own recommendation on each request. The General Counsel reviews each change, and indicates which changes are approved or disapproved, and which changes (usually higher profile or higher risk changes) will only be approved once program staff prepares a memorandum (Risk Memo) acknowledging and accepting the risks associated with the subject changes. The Risk Memo must include:

- (i) An explanation of the proposed change, including the suggested substitute language;
- (ii) A statement that program staff understands the risks, including any potentially increased liability created by the proposed change;
- (iii) An explanation of why the risks are reasonable including any mitigation measures that program staff will implement); and
- (iv) A statement that program staff accepts the risks.

The Risk Memo must be signed by a Division Chief and copied to the AEO for contracts other than INVO contracts, and by Senior Portfolio Manager and copied to the Senior Investment Officer, in the case of INVO contracts.

This process will not change subsequent to the General Counsel's delegation to the Deputy General Counsel.

In addition to receiving delegated authority to approve modifications to the boilerplate contract terms and condition, the Deputy General Counsel will also be permitted, for certain lower risk terms and conditions, to further sub-delegate this authority to the Assistant Chief Counsel for Investments and Advice. The General Counsel has approved this new process and the LEGO delegations will be revised accordingly.

In addition, LEGO will create a database/electronic library of all of the modifications to the terms and conditions that are approved under the new process. This information will then be reported to this Committee on a semi-annual basis.

V. STRATEGIC PLAN:

This item is not a specific part of the Strategic Plan, but is part of the regular and ongoing workload of the Operations Support Services Division.

VI. RESULTS/COSTS:

None.

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